IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.543 OF 2005

The State of Maharashtra. ..Appellant.

v/s.

Suresh Atmaram Markad .. Respondent.

Ms.P.H.Kantharia, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 10th February, 2005

P.C.

Heard Ms.P.H.Kantharia, the learned APP and perused the impugned judgment.

2. The IIIrd Additional Sessions Judge, Satara vide his judgment dated 21.6.2004 acquitted the respondent of the offences punishable under sections 376 and 376-B of the IPC. The State is aggrieved by the order of acquittal and has made this criminal application for grant of leave.

3. The learned Additional Sessions Judge has highlighted the conduct of the prosecutrix and discrepancies in her evidence while ruling that she has not stood the test of trustworthiness.

4. The alleged incident of rape is said to have taken place on 20.11.1998. The prosecutrix seems to have made the complaint to the Superintendent of Police, Satara somewhere in the month of April 2001 and based on that, first information report was registered and the respondent was prosecuted. The prosecution case is that the prosecutrix as an employee in the social welfare section of Panchayat Samittee, Man-Dahiwadi faced departmental enquiry. The accused was enquiry officer in the said enquiry. The accused is alleged to have taken advantage of this position. The accused extracted Rs.14,660/- from the prosecutrix on the assurance that he would settle the matter. The accused then demanded from her sexual favour and started harassing her. On 20.11.1998, the accused came to her house and raped her.

5. After the alleged incident the prosecutrix sent the new year greetings to the accused. The evidence on record suggests that there was some money transaction between the prosecutrix and the accused and in relation thereto, the prosecutrix lodged private complaint in the Court of Judicial Magistrate. Though in the said complaint, the prosecutrix did state about some sexual harassment

from the accused but not a whisper is there that the accused had induced or subordinated her to sexual intercourse or that the accused forcibly committed sexual intercourse with her. At no stage, the prosecutrix complained to her superior/s about the alleged rape. The complaint to the SP is made in the year 2001. Taking into consideration all these facts, it cannot be said that the prosecutrix stood the test of total reliability.

6. It would not be out of place to mention here that even the medical evidence does not bear out the version of the prosecutrix.

7. All in all, it cannot be said that the learned trial Judge erred in acquitting the respondent of the offences punishable under sections 376 and 376-B of the IPC. The view taken by the learned Additional Sessions Judge is plausible and possible. No case for grant of leave is made out.

8. Criminal application for grant of leave is rejected summarily.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)